**DEPARTMENT OF STATE REVENUE**

**Information Bulletin #72**
**Income Tax**
**May 2012**
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**SUBJECT**: S Corporation and Partnership Mandate to File a Composite Return on Behalf of Nonresident Shareholders and Partners

**DIGEST OF CHANGES:** Clarifies that return and payment for onetime payment to nonresident partners and shareholders is due on the $15^{th}$ day of the fourth month after the end of the taxable year.

**REFERENCES**: IC 6-3-4-12; IC 6-3-4-13; IC 6-3-4-15

**EFFECTIVE DATE:** July 1, 2012

Effective for taxable years beginning after Dec. 31, 2007, an S corporation or a partnership shall file a composite adjusted gross income tax return on behalf of all nonresident shareholders or partners. Due to the similar treatment of composite returns for corporations and partnerships, whenever this bulletin mentions "corporation" or "shareholder," it refers to the S corporation or partnership and the shareholder or partner, respectively. The individual nonresident shareholders will be relieved of the obligation to file an individual adjusted gross income tax return unless they have income from other Indiana sources.

Any shareholder that is a corporation or partnership must be excluded from the composite return.

The following limitations and conditions shall apply to those shareholders included in the composite return:

- Any short-term capital gain (loss) plus any long-term capital gain (loss) specifically allocated to partners shall be allowed subject to any "passive activity" loss limitations pursuant to IRC Section 469 and capital loss limitations imposed on noncorporate taxpayers by IRC Section 1211;
- No deduction shall be permitted for interest paid on investment indebtedness under Section 163(d) of the IRC (limitation on investment interest indebtedness);
- No deduction shall be permitted for net operating losses;
- No personal exemptions shall be permitted;
- No deduction shall be allowed for charitable contributions allowed or allowable pursuant to Section 170 of the IRC;
- Any college credit for individual contributions is limited on the composite return to the lower of each shareholder's state tax liability or $100 (no joint credit with spouse is permitted);
- No credit is permitted for taxes paid to other states;
- No credit carryovers are permitted; and
- Any refund of state and/or county taxes will be remitted directly to the corporation.

**COMPOSITE FILING PROCEDURES**

1) (a) Prepare a comprehensive schedule that sets out the calculation of tax attributable to each individual nonresident shareholder. Indicate the names, addresses, and Social Security numbers of all nonresident individuals required to be included in the composite return. Subject to the limitations above, separately compute the Indiana tax liability of each individual nonresident shareholder. Attach this schedule to the Small Business Corporation Return (Form IT-20S) or the Partnership Return (Form IT-65).

(b) For a partnership, composite income means each individual nonresident partner's distributive share of income from the partnership that is derived from sources within Indiana as determined by the use of the apportionment formula described in IC 6-3-2-2(b) on the partnership's income.

(c) Any limitations imposed on the respective shareholders by Section 469 of the Internal Revenue Code (passive activity loss rules) will apply to the composite return.

2) On Form IT-20S or IT-65 enter the total tax liability of those nonresidents included in the composite return. Insert this amount on the line for "total composite tax."

3) Insert the total tax withheld on behalf of the nonresident shareholders included in the composite return on the line for "total composite tax return credits." This amount plus the total tax withheld on behalf of the nonresident shareholders not included in the composite return should conform to the Annual Reconciliation of Withholding (Form WH-3).

4) On a monthly or quarterly basis, using Form WH-1 (Employers Withholding Tax Return), submit withholding tax payments on behalf of all nonresident shareholders along with any withholding for corporate employees.

5) File copy A of Form WH-18 (Indiana Miscellaneous Withholding Tax Statement for Nonresidents) with the Department together with Form WH-3 (Annual Withholding Reconciliation) by March 15 of each year.
(a) Copy B should be given to the recipient for his records.
(b) Copy C should be attached to the composite return.
(c) Copy D is for the payer's records.
(d) Form WH-3 is mailed automatically to the payer in January of each year.

6) If a partnership or an S corporation pays or credits amounts to its nonresident partners or shareholders only one time each year, the return and payment are due on or before the $15^{th}$ day of the $4^{th}$ month after the end of the taxable year.

7) If a person or entity files more than 25 WH-18s per year, the person or entity is required to file the WH-18s in an electronic format.

The corporation filing a composite return for the nonresident shareholders is liable for the tax shown on the return and for any additional tax, interest, and penalty as a result of a subsequent audit and examination. A penalty of $500 is imposed on the S corporation or partnership that fails to file a composite return for all nonresident individual shareholders/partners.

The composite return shall be due with the corporation return. If the IRS allows the corporation an extension on its federal income tax return, the corresponding due dates for its Indiana income tax returns are automatically extended for the same period, plus 30 days.

Michael J. Alley
Commissioner

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